

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

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ALTON NOLEN,

Petitioner,

v.

JIM FARRIS, Warden,  
Oklahoma State Penitentiary,

Respondent.

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Case No. CIV-22-272-F

Judge Stephen P. Friot  
Magistrate Judge Gary M. Purcell

**MOTION FOR EXTENSION OF TIME TO FILE HABEAS CORPUS PETITION AND  
REQUEST FOR LEAVE TO CONDUCT DISCOVERY**

Petitioner Alton Nolen, through undersigned counsel, respectfully requests that the Court grant this motion for an extension of time to file his habeas corpus petition and any request for leave to conduct discovery by the statutorily imposed deadline of January 27, 2023. In support of this motion, Mr. Nolen states as follows:

1. Alton Nolen was convicted of First-Degree Malice Murder in the District Court in Cleveland County, Oklahoma, and was sentence to death. Case No. CF-2014-1792. Mr. Nolen's convictions and death sentence were affirmed on direct appeal by the Oklahoma Supreme Court on March 18, 2021. *Nolen v. State*, 485 P.3d 828 (Okla. 2021). His petition for certiorari was denied on November 22, 2021. *Nolen v. Oklahoma*, 142 S.Ct. 566 (2021).

2. The Oklahoma Supreme Court denied Mr. Nolen's timely filed original application for capital post-conviction relief on January 27, 2022. *Nolen v. State*, Case No. PCD-2018-215.

3. On April 5, 2022, this Court appointed the Federal Community Defender Office for the Eastern District of Pennsylvania to represent Mr. Nolen (Doc. 5).

4. On May 24, 2022, Magistrate Judge Gary M. Purcell held a telephonic Death Penalty Case Management Conference (Doc. 13). Following the conference, the Court ordered that Mr. Nolen file his petition for writ of habeas corpus and any request for leave to conduct discovery by December 5, 2022 (Doc. 14).

5. Counsel have been diligently reviewing the voluminous state court record – including, *inter alia*, transcripts from forty days of court proceedings – and investigating Mr. Nolen’s case and have made considerable progress in preparing Mr. Nolen’s habeas petition. However, counsel will not be able to complete the petition satisfactorily before the court-ordered due date of December 5, 2022.

6. Under the federal statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA), Mr. Nolen’s federal habeas petition must be filed by January 27, 2023. *See* 28 U.S.C. § 2244(d).

7. Mr. Nolen seeks an extension of time to allow him to file his petition and any discovery request by the controlling statutory date of January 27, 2023.

8. This request is made in good faith and is not predicated on an intent to delay, nor is it intended to prejudice Respondent. This motion is being made because of the specific needs of this capital case and because of counsel’s obligation to provide professionally appropriate representation to Mr. Nolen, a death-sentenced prisoner.

9. Counsel for Mr. Nolen contacted counsel for the State before filing this motion to ascertain whether the Respondent opposes this motion. *See* LCrR7.1(k). Counsel indicated that the State does not object to this motion.

10. Upon request of counsel for the State, Petitioner includes the following language to further explain the State's position on this motion:

The State wishes to stress that its non-objection in this case to an extension to the end of the AEDPA limitations period is unusual and due to extraordinary circumstances, to wit, the State's own heavy caseload, particularly in light of the 22 scheduled executions the State is currently party to. The State strongly believes the federal habeas statute of limitations is intended to reduce the amount of time cases spend on review rather than as an automatic basis for an extension. In agreeing to the request to an extension here, the State does not intend to set a precedent, or suggest that the States agrees, that capital inmates are automatically entitled to their full one-year statute of limitations period.

**Relief Requested**

WHEREFORE, Petitioner Alton Nolen requests that this court order that he file his habeas corpus petition and any motion for leave to conduct discovery by January 27, 2023. A proposed order is attached.

Respectfully submitted,

/s/ Hunter S. Labovitz  
Hunter S. Labovitz  
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Dated: November 28, 2022  
Philadelphia, PA

**CERTIFICATE OF SERVICE**

I, Hunter Labovitz, hereby certify that on this 28th day of November, 2022, I electronically transmitted the foregoing document to the Clerk of Court using the Court's electronic case filing system. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jennifer L. Crabb, Assistant Attorney General, Attorney for Respondents

Caroline E.J. Hunt, Assistant Attorney General, Attorney for Respondents

/s/ Hunter Labovitz  
Hunter Labovitz